

## 2011 DRAFTING REQUEST

### Bill

Received: 12/01/2010

Received By: pkahler

Wanted: As time permits

Companion to LRB:

For: Donald Pridemore (608) 267-2367

By/Representing: Bill Savage

May Contact:

Drafter: pkahler

Subject: Dom. Rel. - cust./plac./vis.

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Pridemore@legis.wisconsin.gov

Carbon copy (CC:) to:

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Equalizing physical placement

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### Instructions:

See attached

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 12/01/2010	jdyer 12/03/2010		_____ _____			
/1			phenry 12/03/2010	_____ _____	mbarman 12/03/2010	lparisi 03/09/2011	

FE Sent For:

<END>

→ Not Needed

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/?	pkahler 12/01/2010	jdye 12/03/2010		_____			
/1			phenry 12/03/2010	_____	mbarman 12/03/2010		

FE Sent For:

**<END>**

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1?	pkahler	1/12/3 jld	12/4 PH	12/4 PH			

FE Sent For:

<END>

**Kahler, Pam**

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**From:** Savage, Bill  
**Sent:** Wednesday, December 01, 2010 9:55 AM  
**To:** Kahler, Pam  
**Subject:** for next session

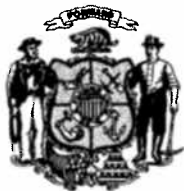
**Attachments:** AB-571.pdf

Hello young lady, long time no see. (as a matter of fact, have I ever seen you?) My mind is not as good as it used to be, and that is scary!

Could you turn this into a 2011 bill, just as is? thanks..Bill

2007 AB 571

(07-1804/2)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0611/51

PJK: A:....

jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Draft  
(12-1)

you cut

Insert RC

1

AN ACT relating to: ???

✓

Analysis by the Legislative Reference Bureau

Insert A

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 2 SECTION 1. 767.41 (4) (a) 2. of the statutes is amended to read:
- 3 767.41 (4) (a) 2. In determining the allocation of periods of physical placement,
- 4 the court shall consider each case on the basis of the factors in sub. (5) (am), subject
- 5 to sub. (5) (bm). The court shall set presume that a placement schedule that allows
- 6 the child to have regularly occurring, meaningful periods of physical placement with
- 7 each parent and that maximizes equalizes to the highest degree the amount of time
- 8 the child may spend with each parent, taking into account geographic separation and
- 9 accommodations for different households. Insert 1-9

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001

Insert 2-1 ✓

a. 109; 2003 a. 130; 2005 a. 101, 174, 264; 2005 a. 443 ss. 29, 94 to 98; Stats. 2005 s. 767.41; 2005 a. 471 ss. 1 to 5; 2007 a. 20; 2007 a. 96 ss. 141, 142; 2007 a. 97, 187; 2009 a. 28, 79.

1 SECTION 2. 767.41 (6) (a) of the statutes is amended to read:

(2) 767.41 (6) (a) If legal custody or physical placement is contested, the court shall  
3 state orally and in writing why its findings relating to legal custody or physical  
4 placement are in the best interest of the child the reasons for its order. ✓

Insert 2-2 ✓

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130; 2005 a. 101, 174, 264; 2005 a. 443 ss. 29, 94 to 98; Stats. 2005 s. 767.41; 2005 a. 471 ss. 1 to 5; 2007 a. 20; 2007 a. 96 ss. 141, 142; 2007 a. 97, 187; 2009 a. 28, 79.

5 SECTION 3. 767.451 (1) (b) 2. (intro.) of the statutes is amended to read:

6 767.451 (1) (b) 2. (intro.) With respect to subd. 1., there There is a rebuttable

(7) presumption that

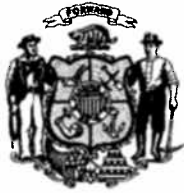
Insert 2-7 ✓

History: 1987 a. 355, 364; 1995 a. 27 s. 9126 (19); 1999 a. 9; 2003 a. 130; 2005 a. 101; 2005 a. 443 ss. 160 to 162; Stats. 2005 s. 767.451; 2005 a. 471 ss. 6 to 8; 2007 a. 20; 2007 a. 96 ss. 143 to 146.

8 (END)

Insert 2-8 ✓

D - note  
↓



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1804/2

PJK:jld:sh

## 2007 ASSEMBLY BILL 571

November 6, 2007 - Introduced by Representatives PRIDEMORE, GRONEMUS, HAHN, A. WILLIAMS, ALBERS, KESTELL, MUSSER, GUNDRUM, GUNDERSON, VAN ROY, SOLETSKI, VOS, VRUWINK, HINES, MOULTON, PETERSEN, STRACHOTA and NASS, cosponsored by Senators PLALE, A. LASEE, SCHULTZ, OLSEN and LEIBHAM. Referred to Committee on Children and Family Law.

*Insert RC*

1 AN ACT *to repeal* 767.451 (1) (b) 3.; *to amend* 767.41 (4) (a) 2., 767.41 (6) (a) and  
2 767.451 (1) (b) 2. (intro.); *to repeal and recreate* 767.451 (1) (b) 2. a. and  
3 767.451 (1) (b) 2. b.; and *to create* 767.41 (5) (am) 5m. of the statutes; **relating**  
4 **to:** equalizing physical placement to the highest degree, requiring the court to  
5 state the reasons for ordering sole legal custody or not equalizing physical  
6 placement, and standards for modifying legal custody or physical placement.

### *Analysis by the Legislative Reference Bureau*

*Insert A 183*

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a minor child based on the best interest of the child. In current law, there is a presumption that joint legal custody is in the child's best interest. The court also must allocate periods of physical placement between the parties. The court is required to set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into consideration geographic separation and accommodations for different households. The court may deny periods of physical placement with a parent only if the court finds that the physical placement would endanger the child's physical, mental, or emotional health. When determining custody and periods of physical placement, the court is required, under current law, to consider a number of factors (custody and placement factors), such as the wishes


**ASSEMBLY BILL 571***Insert A cont'd**283*

of the child and of the parties, the interaction and interrelationship of the child with his or her parents, the amount and quality of time that each party has spent with the child in the past, the child's adjustment to the home, school, and community, and the cooperation and communication between the parties.

This bill provides that, when the court allocates periods of physical placement, instead of maximizing the amount of time a child may spend with each parent, taking into consideration geographic separation and accommodations for different households, the court must presume that a placement schedule that equalizes to the highest degree the amount of time the child may spend with each parent is in the child's best interest. This presumption may be rebutted if the court finds by clear and convincing evidence, after considering the custody and placement factors, that equalizing physical placement would not be in the child's best interest. The bill also makes the geographic separation of the parties an additional custody and placement factor for the court to consider in every case when determining custody and periods of physical placement.

Under current law, if legal custody or physical placement is contested, the court must state in writing why its findings relating to legal custody or physical placement are in the best interest of the child. Under the bill, if legal custody or physical placement is contested and the court orders sole legal custody or a placement schedule that does not equalize placement between the parties to the highest degree, the court must state both orally and in writing the reasons for its order.

Under current law, after two years after making an initial order of legal custody or physical placement, a court may revise legal custody or physical placement in a manner that substantially alters the time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child and that there has been a substantial change in circumstances since the last order was made. There is a rebuttable presumption that continuing the current allocation of decision making concerning the child and continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child, and a change in the economic circumstances or marital status of a party is not sufficient to meet the standard for modification. The bill changes the rebuttable presumption that applies to modifications after two years after an initial order of legal custody or physical placement. Under the bill, there is a rebuttable presumption that the standard for modification is met, that is, that modification is in the best interest of the child and that there has been a substantial change in circumstances since the last order was made, if either of the following has occurred: 1) a parent has modified his or her lifestyle or the location of his or her residence to an extent that affects the amount of time the parent is able to care for the child; or 2) a parent has successfully completed parenting classes, a drug or alcohol abuse treatment program, or an anger management program to address a problem that previously hindered his or her ability to care for the child. In addition,





## ASSEMBLY BILL 571

Insert A contd 383

Insert  
A-1

the bill deletes the provision that makes a change in the economic circumstances or marital status of a party insufficient to meet the standard for modification.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 767.41 (4) (a) 2. of the statutes is amended to read:

767.41 (4) (a) 2. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5) (am), subject to sub. (5) (bm). The court shall set presume that a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes equalizes to the highest degree the amount of time the child may spend with each parent, <sup>not</sup> taking into account geographic separation and accommodations for different households <sup>not</sup> is in the best interest of the child. The presumption under this subdivision is rebutted if the court finds by clear and convincing evidence, after considering all of the factors in sub. (5) (am), subject to sub. (5) (bm), that equalizing physical placement to the highest degree would not be in the child's best interest.

SECTION 2. 767.41 (5) (am) 5m. of the statutes is created to read:

767.41 (5) (am) 5m. The geographic separation of the parties.

SECTION 3. 767.41 (6) (a) of the statutes is amended to read:

767.41 (6) (a) If legal custody or physical placement is contested <sup>not</sup> and the court orders sole legal custody or a placement schedule that does not equalize physical placement between the parties to the highest degree, the court shall state orally and in writing why its findings relating to legal custody or physical placement are in the best interest of the child the reasons for its order.

SECTION 4. 767.451 (1) (b) 2. (intro.) of the statutes is amended to read:

## ASSEMBLY BILL 571

## SECTION 4

1 767.451 (1) (b) 2. (intro.) <sup>with</sup> ~~With respect to subd. 1., there~~ There is a rebuttable  
2 presumption that any of the following is sufficient to meet the standards for  
3 modification under subd. 1. ✓

4 **SECTION 5.** 767.451 (1) (b) 2. a. <sup>✓</sup> of the statutes is repealed and recreated to read:

5 767.451 (1) (b) 2. a. A parent modifying his or her lifestyle or the location of his  
6 or her residence to an extent that affects the amount of time the parent is able to care  
7 for the child. ✓

8 **SECTION 6.** 767.451 (1) (b) 2. b. <sup>✓</sup> of the statutes is repealed and recreated to read:

9 767.451 (1) (b) 2. b. A parent having successfully completed parenting classes,  
10 a drug or alcohol abuse treatment program, or an anger management program to  
11 address a problem that previously hindered the parent's ability to care for the child. ✓

12 **SECTION 7.** 767.451 (1) (b) 3. <sup>✓</sup> of the statutes is repealed.

13 **SECTION 8. Initial applicability.**

14 (1) This act first applies to actions or proceedings, including actions or  
15 proceedings to modify a judgment or order previously granted, that are commenced  
16 on the effective date of this subsection. ✓

17 (END)

d-note  
↓

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

date

LRB-0611/1dn

PJK: :....

JLd

The only change to 2007 Assembly Bill 571<sup>✓</sup> that I have made in this draft is the addition of the last sentence of the analysis.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0611/ins  
PJK:.....

INSERT A-1

(to Insert A)

no 4

The effect of this change is to make a change in economic circumstances or marital status possibly, depending on the circumstances, but not automatically, sufficient to meet the standard for modification.✓

(END OF INSERT A-1)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0611/1dn  
PJK:jld:ph

December 3, 2010

The only change to 2007 Assembly Bill 571 that I have made in this draft is the addition of the last sentence of the analysis.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**Parisi, Lori**

---

**From:** Savage, Bill  
**Sent:** Wednesday, March 09, 2011 12:20 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-0611/1 Topic: Equalizing physical placement

Please Jacket LRB 11-0611/1 for the ASSEMBLY.